

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Keyne Jean Villert	Team: Team # 3	CCRB Case #: 201301392	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 02/23/2013 11:50 PM, Sunday, 02/24/2013 , Friday, 03/01/2013	Location of Incident: In front of § 87(2)(b)	Precinct: 79	18 Mo. SOL 8/23/2014	EO SOL 8/23/2014	
Date/Time CV Reported	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Tue, 03/05/2013 4:30 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			079 PCT
2. POM Brian Alexander	00570	948599	079 PCT
3. SGT Anthony Famighetti	03585	932617	079 PCT
4. DI Michael Lipetri	00000	906647	079 PCT
5. An officer			079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Pamela Benites	13086	946728	079 PCT
2. POM Raymond Williams	22154	947610	079 PCT
3. POM Joseph Ramistella	04068	949526	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: On February 23, 2013, officers used physical force against § 87(2)(b)	
B.SGT Anthony Famighetti	Discourtesy: On February 23, 2013, Sgt. Anthony Famighetti spoke rudely to § 87(2)(b)	
C.SGT Anthony Famighetti	Abuse: On February 23, 2013, Sgt. Anthony Famighetti threatened to arrest § 87(2)(b)	
D. Officers	Abuse: On February 23, 2013, officers refused to provide their names and shield numbers to § 87(2)(b)	
E.POM Brian Alexander	Off. Language: On February 23, 2013, PO Brian Alexander made remarks to § 87(2)(b) based upon race.	
F.POM Brian Alexander	Force: On February 23, 2013, PO Brian Alexander tightly handcuffed § 87(2)(b)	
G. An officer	Discourtesy: On February 23, 2013, an officer spoke rudely to § 87(2)(b)	
H.POM Brian Alexander	Force: On March 1, 2013, PO Brian Alexander used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
I.DI Michael Lipetri	Off. Language: On March 1, 2013, DI Michael Lipetri made remarks to § 87(2)(b) based upon race.	

Case Summary

On February 27, 2013, § 87(2)(b) filed this complaint in-person with Sgt. David Camacho, of the 77th Precinct, who forwarded this complaint to the Internal Affairs Bureau (IAB), generating IAB log 2013-8721. On March 5, 2013, the Civilian Complaint Review Board (CCRB) received this complaint.

On February 23, 2013, at approximately 11:50 p.m., § 87(2)(b) and § 87(2)(b) were inside § 87(2)(b) in Brooklyn when officers arrived. On March 1, 2013, at 9:50 p.m., officers responded again to the same location. The following allegations resulted:

- **Allegation A – Force: On February 23, 2013, officers used physical force against § 87(2)(b) § 87(2)(g)**
§ 87(2)(b) § 87(2)(g)
§ 87(2)(b) § 87(2)(g)
- **Allegation B – Discourtesy: On February 23, 2013, Sgt. Anthony Famighetti spoke rudely to § 87(2)(b)**
- **Allegation C – Abuse of Authority: On February 23, 2013, Sgt. Anthony Famighetti threatened to arrest § 87(2)(b)**
- **Allegation D – Abuse of Authority: On February 23, 2013, officers refused to provide their names and shield numbers to § 87(2)(b)**
- **Allegation E – Offensive Language: On February 23, 2013, PO Brian Alexander made remarks to § 87(2)(b) based upon race.**
- **Allegation F: On February 23, 2013, PO Brian Alexander tightly handcuffed § 87(2)(b) § 87(2)(g)**
§ 87(2)(b) § 87(2)(g)
§ 87(2)(b) § 87(2)(g)
- **Allegation G – On February 23, 2013, an officer spoke rudely to § 87(2)(b) § 87(2)(g)**
§ 87(2)(b) § 87(2)(g)
- **Allegation H – Force: On March 1, 2013, PO Brian Alexander used physical force against § 87(2)(b) § 87(2)(g)**
§ 87(2)(b) § 87(2)(g)
§ 87(2)(b) § 87(2)(g)
- **Allegation I – Offensive Language: On March 1, 2013, DI Michael Lipetri made remarks to § 87(2)(b) based upon race. § 87(2)(g)**
§ 87(2)(b) § 87(2)(g)
§ 87(2)(b) § 87(2)(g)
§ 87(2)(b) § 87(2)(g)

This case was not eligible for mediation because § 87(2)(b) was arrested as a result of the incident.

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Arrest Photographs and Other Photographs

§ 87(2)(b)'s arrest photographs do not show any visible injuries (encl. F4). § 87(2)(b) also provided the CCRB with blurry photos of his face, showing a mark towards the end of his left eyebrow closest to his left temple area. The pictures were undated; however, § 87(2)(b) stated that they were taken on February 24, 2013 (encl. F5-F6).

Statements to Medical Personnel

On February 24, 2013, § 87(2)(b) stated to medical personnel from § 87(2)(b) that he had been attacked by police officers (encl. MR15).

On February 25, 2013, § 87(2)(b) stated to medical personnel from the § 87(2)(b) that he had an altercation with officers on February 23, 2013, at which point he was thrown against a wall, hitting the left side of his face. § 87(2)(b) added that his handcuffs were tight (encl. MR29).

CCRB Testimony

On March 15, 2013, § 87(2)(b) was interviewed at the CCRB (encl. F1-F3). His statement is summarized below.

On February 23, 2013, at approximately 11:50 p.m., § 87(2)(b) was having dinner inside § 87(2)(b) located at § 87(2)(b) with his wife § 87(2)(b) his sister § 87(2)(b) and approximately seven additional family members. The club is on the second floor of the building with a set of stairs leading from the street to the second floor. An officer, identified via investigation as Sgt. Anthony Famighetti, of the 79th Precinct, walked up to the premises and asked § 87(2)(b) whether he was in possession of a liquor license. § 87(2)(b) informed Sgt. Famighetti that he was in the process of renewing his license and the two of them, along with § 87(2)(b) and § 87(2)(b) eventually walked down to the entrance of the building.

At some point, § 87(2)(b) pulled out his phone from his pocket and attempted to call a business partner about the situation. No additional civilians came downstairs. Soon thereafter, an officer, identified via investigation as PO Pamela Benites, also of the 79th Precinct, asked § 87(2)(b) for his identification. § 87(2)(b) first stated, "Just give me one second," and then attempted to retrieve his wallet from one of his back pockets for less than a minute until PO Benites stated, "If you don't give me your ID, I will take it." § 87(2)(b) replied, "I'm on the phone. Just give me a minute and I'll give you the ID." PO Benites then reached towards § 87(2)(b)'s pocket and made physical contact with his hand. § 87(2)(b) did not know whether PO Benites actually entered his pockets. § 87(2)(b) then stated, "You can't do that," and shifted his body. § 87(2)(b) could not detail his physical reaction to PO Benites' action any further.

An officer, identified via investigation as PO Brian Alexander, of the 79th Precinct, then grabbed § 87(2)(b)'s right hand and started to place him in handcuffs while another unidentified officer grabbed his left hand, and proceeded to pull him out of the building. § 87(2)(b) first

stated that ten to fifteen officers then “beat” him up, but later retracted his statements by indicating that four to six unidentified uniformed white male officers, who he could not describe any further, instead knocked his head against a nearby wall and threw him down to the ground. Officers then pulled § 87(2)(b)'s hoodie over face and punched him multiple times. § 87(2)(b) could not describe the strikes any further, or attribute them to specific officers. § 87(2)(b) denied resisting arrest.

Soon thereafter, § 87(2)(b) observed an additional unidentified officer, exit a patrol van, approach him, and punch him on his head, towards his scalp area. This officer was a black man, approximately 5’6” tall, stocky, with stripes either on the forearm or shoulder area of his uniform. § 87(2)(b) was then escorted inside a marked patrol van by PO Alexander, who called him a “big black animal,” and further tightened his handcuffs. § 87(2)(b) and PO Alexander were alone inside the van at the time the remark was made and his handcuffs were tightened.

Between March 15, 2013, and March 5, 2014, § 87(2)(b) stated to the undersigned investigator, on multiple occasions, that he would provide him with copies of the video footage captured by his business’ cameras located outside the premises. However, § 87(2)(b) has failed to provide the video footage despite numerous follow-up conversations. § 87(2)(b) did provide the CCRB with video footage taken on a cell phone during the incident. This footage is summarized later in the “Other Evidence” section of this report.

Victim: § 87(2)(b)

- § 87(2)(b)

Photograph

A photograph of § 87(2)(b)'s left wrist was taken by the undersigned investigator at the CCRB on March 15, 2013. § 87(2)(b) stated her wrist was still swollen at the time the photographs were taken; however the photograph does not show any visible swelling (encl. G5).

CCRB Testimony

On March 15, 2013, § 87(2)(b) was interviewed at the CCRB (encl. G1-G3). § 87(2)(g)

On February 23, 2013, at approximately 11:50 p.m., § 87(2)(b) was inside § 87(2)(b) when she observed Sgt. Famighetti walk down with § 87(2)(b). Soon thereafter, § 87(2)(b) and § 87(2)(b) also walked down the stairs, and § 87(2)(b) heard PO Benites ask § 87(2)(b) for his identification. PO Benites then placed one of her hands inside § 87(2)(b)'s front right pocket, and § 87(2)(b) stated, “You’re not supposed to do that.”

PO Benites then pulled § 87(2)(b) by his shirt, at which point, an unidentified uniformed black male officer exited a marked patrol van, approached § 87(2)(b) and pulled him down to the ground. Sgt. Famighetti then punched § 87(2)(b) in the face three times. Additional officers, who § 87(2)(b) could not describe, also punched § 87(2)(b) multiple times. § 87(2)(b)'s view of the struggle was obstructed by the officers.

After the struggle was over, Sgt. Famighetti stated to § 87(2)(b) “Shut the fuck up,” and, “Shut up, I’m going to arrest you.” § 87(2)(b) then asked Sgt. Famighetti for his name and shield number, and Sgt. Famighetti replied, “If you don’t move, I’m going to arrest you.” Sgt. Famighetti did not provide the requested information. § 87(2)(b) complied with the directive and walked further down the street. There, an unidentified uniformed white male officer stated to § 87(2)(b) “Shut the fuck up.” § 87(2)(b) also requested the name and shield number of each officer present at the scene, but none of the officers provided the requested information.

On March 1, 2013, at approximately 9:50 p.m., several officers, including PO Alexander and an officer identified via investigation as DI Michael Lipetri, of the 79th Precinct, came to the location. The officers carried boxes containing alcohol out of the premises and into an unmarked patrol car. § 87(2)(b) was standing by the door leading to the premises when PO Alexander walked through the doorway and made contact with her left wrist with a box he was carrying. She believed that there was enough space that the officer could have avoided bumping into her. § 87(2)(b) then immediately approached DI Lipetri, showed him her wrist and asked him whether he witnessed the incident, and DI Lipetri proceeded to call her a “black fucking monkey.” Her wrist swelled up as a result of the contact, but she did not seek medical attention.

Witness: § 87(2)(b)

- § 87(2)(b)

CCRB Testimony

On March 15, 2013, § 87(2)(b) was interviewed at the CCRB (encl. H1-H2). Her statement is summarized below.

On February 23, 2013, at approximately 11:50 p.m., § 87(2)(b) was having dinner inside § 87(2)(b) with her family when Sgt. Famighetti and § 87(2)(b) walked downstairs. Approximately fifteen minutes later, § 87(2)(b) also walked downstairs and observed PO Benites state to § 87(2)(b) “I will put my hand in your pockets and take your ID.” § 87(2)(b) replied, “You can’t do that,” but did not make any movements with his arms. PO Benites then grabbed § 87(2)(b)’s right forearm while Sgt. Famighetti grabbed his left arm, and they pulled him to the ground face first, pinned him down, and handcuffed him. § 87(2)(b) did not resist during the struggle. Four to five unidentified uniformed white male officers, who she could not describe any further, approached § 87(2)(b) and punched him at least four times. § 87(2)(b) first stated that an unidentified uniformed black male officer then “beat” § 87(2)(b) up and punched him, but later retracted her statement by indicating that she did not see him punch § 87(2)(b). § 87(2)(b) did not observe Sgt. Famighetti punch § 87(2)(b). Her view of the struggle between § 87(2)(b) and the officers was obstructed.

§ 87(2)(b) then approached PO Benites who stated, “Move off,” and pushed her away with two hands, causing her to take a few steps back. PO Benites was standing between § 87(2)(b) and § 87(2)(b) at the time of the push.

§ 87(2)(b) first stated that § 87(2)(b) was eventually pulled back up to his feet and that officers she could not describe then knocked his head against a nearby wall; however, she later retracted her statement by indicating that the unidentified uniformed black male officer was the officer who knocked § 87(2)(b)’s head against the wall.

Additional Civilian Interviews

On May 3, and 28, 2013, witnesses § 87(2)(b) and § 87(2)(b) were interviewed at the CCRB, respectively (encl. I1-I8). § 87(2)(g)

The officers asked § 87(2)(b) to provide his identification. However, § 87(2)(b) refused to comply with their request. PO Williams then reached towards one of § 87(2)(b)’s pockets, and § 87(2)(b) immediately placed one of his hands on top of the pocket.

§ 87(2)(b) stated that § 87(2)(b) then started screaming, and PO Williams then stated, “Shut the fuck up.” § 87(2)(b) added that PO Williams ordered § 87(2)(b) to step outside, and that § 87(2)(b) then stepped towards the interior of the building. § 87(2)(b) also

stated that PO Benites grabbed § 87(2)(b)'s hand, and started pulling it behind his back, while PO Williams also grabbed § 87(2)(b) and pulled him down to the ground.

During the struggle, § 87(2)(b) attempted to approach § 87(2)(b). § 87(2)(b) did not hear any officers make any threats of arrest. § 87(2)(b) heard PO Benites tell § 87(2)(b) "Back up or you're going to get locked up." § 87(2)(b) observed PO Benites extend her arms out, making physical contact with § 87(2)(b) and order her to take steps back.

Although § 87(2)(b) observed additional units arrive at the scene, § 87(2)(b) said she was not present for this because she had left the area for a short amount of time before returning to the scene. PO Williams handcuffed § 87(2)(b) after the additional units arrived.

§ 87(2)(b) and § 87(2)(b) did not see any officers punch § 87(2)(b). § 87(2)(b) did not see any officers knock § 87(2)(b) against a wall, and § 87(2)(b) stated that she did not observe the struggle any further. § 87(2)(b) did not hear any officers make any racial remarks, use profanity, or make any additional threats of arrest. § 87(2)(b) did not hear any officers make any racial remarks or threats of arrest, or use any additional profanity.

Photo Arrays

On February 7, 2014, § 87(2)(b) viewed a photo array that included photos of all officers assigned to the 79th Precinct around the time of the incident, along with some filler officers not assigned to the command, closely matching the description of the unidentified uniformed black male officer (encl. F10-F13). § 87(2)(b) did not recognize any of the potential subject officers and instead indicated that two of the filler officers may have been the subject officers. On the same day, § 87(2)(b) was shown the same photo array as § 87(2)(b) but she did not recognize any of the officers and she noted that she did not get a good view of the subject officers during the incident. Subsequent attempts to schedule § 87(2)(b) and § 87(2)(b) for additional photo viewings have been unsuccessful. Attempts to contact § 87(2)(b) for a photo viewing were also unsuccessful.

Civilians Not Interviewed

§ 87(2)(b) and § 87(2)(b) stated that multiple individuals known to them witnessed the incident, but they could not provide their identity or contact information at the time of their interviews. They said they would contact the undersigned investigator with the requested information; however, despite multiple follow-up calls to obtain this information, the undersigned investigator was only able to retrieve the names and contact information of § 87(2)(b) and § 87(2)(b) who are related to § 87(2)(b).

On April 21, 2014, the undersigned investigator contacted § 87(2)(b), who was identified as having called 911 at the time of incident. He explained that he had been holding a party inside of § 87(2)(b) at the time of the incident, but that he did not witness the allegations. Consequently, he was not interviewed in person. (encl. W26)

NYPD Statements:

Subject Officer: SGT. ANTHONY FAMIGHETTI

- *Sgt. Famighetti was § 87(2)(b)*
- *Sgt. Famighetti worked from 6:30 p.m. on February 23, 2013, to 3:27 a.m. on February 24, 2013, in uniform and assigned to Conditions in a marked patrol van with PO Alexander, PO Benites, and PO Williams. Sgt. Famighetti worked from 5:15 p.m. on March 1, 2013, to 2:12 a.m. on March 2, 2013, in uniform and was assigned to Conditions in a marked patrol van with PO Ramistella and PO Alexander.*

Memo Book Entries

Sgt. Famighetti noted the following February 24, 2013, entries:

At 0:01 a.m., § 87(2)(b) was arrested in front of § 87(2)(b) for § 87(2)(b)

Force was used to restrain § 87(2)(b) (encl. J1-J3).

Sgt. Famighetti noted the following March 1, 2013, entries:

At 9:50 p.m., a business inspection was conducted at § 87(2)(b) At 10:00 p.m., a summons was issued (encl. J4-J5).

CCRB Testimony

On May 7, 2013, Sgt. Famighetti was interviewed at the CCRB (encl. J7-J9). His statement is summarized below.

On February 23, 2013, at approximately 11:50 p.m., Sgt. Famighetti arrived at § 87(2)(b) with PO Williams and PO Alexander, to conduct a business inspection. Sgt. Famighetti did not remember whether PO Benites was also present. Sgt. Famighetti first entered the premises where he observed patrons being served with alcohol at the bar but did not see a liquor license displayed. Sgt. Famighetti eventually approached § 87(2)(b) who he knew was the manager of the nightclub, and the two of them exited the building.

While outside, Sgt. Famighetti asked § 87(2)(b) whether he was in possession of a liquor license for the premises, at which point § 87(2)(b) admitted that he did not have one. Sgt. Famighetti then ordered PO Alexander and PO Williams to get § 87(2)(b)'s identification and walked away to his nearby marked patrol van to look up the specific violations with which he was going to have § 87(2)(b) summonsed. While walking, Sgt. Famighetti overheard § 87(2)(b) refusing to provide his identification to PO Alexander.

At some point, Sgt. Famighetti was inside the patrol van when he heard § 87(2)(b) start screaming and yelling. Through the van's side view mirror, Sgt. Famighetti observed § 87(2)(b) push PO Alexander with his chest multiple times. Sgt. Famighetti had not observed any officers make physical contact with § 87(2)(b) up to that point.

Sgt. Famighetti then exited the van, approached § 87(2)(b) and grabbed his right arm. Multiple civilians then exited the nightclub and started pulling § 87(2)(b) back towards the interior of the building. During the struggle, § 87(2)(b) resisted by flailing his arms and pushing the officers away. Sgt. Famighetti released his grip on § 87(2)(b) and made a call for additional units. Sgt. Famighetti then turned his back to § 87(2)(b) to face the growing crowd gathered around the officers. Sgt. Famighetti kept the crowd away by pushing it away as it came closer.

Sgt. Famighetti occasionally turned his head towards § 87(2)(b) while still doing crowd control. He observed § 87(2)(b) and the officers struggle down on the ground, with the officers repeatedly attempting to grab a hold of § 87(2)(b)'s arms. Sgt. Famighetti did not see § 87(2)(b) being brought down to the ground. Soon thereafter, additional officers that Sgt. Famighetti could not identify arrived at the scene. It was not until then that § 87(2)(b) was finally handcuffed and escorted to a nearby marked patrol car.

Sgt. Famighetti did not observe any additional force used against § 87(2)(b). Sgt. Famighetti denied punching § 87(2)(b). He did not observe PO Benites push § 87(2)(b). Only two women, one of whom could have been § 87(2)(b), asked Sgt. Famighetti for his name and shield number. Sgt. Famighetti verbally provided the information to each woman. He did not hear any civilians ask any other officers for their names or shield numbers. He did not use any profanity, nor hear any officers do so during the incident. He did not threaten to arrest any civilians, nor hear any officers do so during the incident.

On March 1, 2013, at approximately 9:50 p.m., Sgt. Famighetti responded to a call for

additional units at the same location. Sgt. Famighetti assisted in confiscating boxes of alcohol from inside the premises. Summonses were also eventually issued in regards to the alcohol. Sgt. Famighetti did not observe any officers interact with § 87(2)(b) during the incident.

Subject Officer: PO BRIAN ALEXANDER

- PO Alexander was § 87(2)(b)
- On February 23, and March 1, 2013, PO Alexander worked the same tour and assignment as Sgt. Famighetti.

Criminal Complaint Number § 87(2)(b) and Arrest Report Number § 87(2)(b)

During the business inspection of § 87(2)(b) the owner and manager of the premises, refused to give his identification to PO Alexander. The premises did not have a liquor license displayed and it was determined that they did not actually have a license to have or sell liquor. When the officers attempted to place § 87(2)(b) under arrest, he resisted by flailing his arms and refusing to be handcuffed behind his back. No physical force was used to arrest § 87(2)(b). His physical condition was apparently normal (encl. K1-K5).

Criminal Complaint and Supporting Deposition Report

The criminal complaint and supporting deposition report indicates that § 87(2)(b) resisted arrest by flailing his arms. § 87(2)(b) also refused to give PO Alexander his arms while PO Alexander was attempting to place him under arrest. § 87(2)(b) also yelled and screamed at PO Alexander, at the time of the arrest, causing a crowd to form (encl. K6).

Memo Book Entries

PO Alexander noted the following February 24, 2013, entries:

At 11:50 p.m., PO Alexander conducted a business inspection at § 87(2)(b). When § 87(2)(b) was asked for his identification, he became violent, irate, and began screaming. When attempting to place him under arrest, § 87(2)(b) did resist by flailing his arms. § 87(2)(b) does not have a liquor license to have or sell liquor inside the premises. At 12:01 a.m., § 87(2)(b) was arrested (encl. L1-L3).

PO Alexander noted the following March 1, 2013, entries:

At 10:10 p.m., PO Alexander was asked to respond to § 87(2)(b). At 10:35 p.m., two summonses were issued (encl. L4-L5).

CCRB Testimony

On May 9, 2013, PO Alexander was interviewed at the CCRB (encl. L7-L10). § 87(2)(g)

PO Alexander added the following in regards to the February 23, 2013, incident:

PO Benites was also present at the time of the incident. PO Alexander asked § 87(2)(b) for his identification multiple times, but § 87(2)(b) verbally refused to comply with the order each time while speaking on a phone. PO Alexander ordered § 87(2)(b) to get off the phone, but § 87(2)(b) refused to comply. During this conversation, multiple civilians were pulling § 87(2)(b) towards the interior of the building. At that point, PO Alexander decided to arrest § 87(2)(b). He started grabbing his upper arms and pulling him out of the doorway to the building. He informed § 87(2)(b) that he was being arrested. PO Williams assisted PO Alexander with pulling § 87(2)(b) out. As the officers were pulling on § 87(2)(b) he started screaming and flailing his arms.

Approximately thirty seconds later, the officers managed to pull § 87(2)(b) out of the doorway, and the three of them fell down to the ground. While on the ground, PO Alexander starting pulling § 87(2)(b)'s arms behind his back, but § 87(2)(b) kept screaming and pulling his arms out of PO Alexander's grip. PO Alexander then punched § 87(2)(b)'s chest area three times to get him to him to comply with the officers.

Sgt. Famighetti was doing crowd control with PO Benites during the struggle. PO Alexander did not manage to handcuff § 87(2)(b) until after the additional units had arrived. PO Alexander did not know which officers responded to the call.

PO Alexander denied using any additional force against § 87(2)(b). PO Alexander denied calling § 87(2)(b) a "big black animal" during the incident. PO Alexander did not remember being asked by any civilians for his name and shield number. PO Alexander could not remember PO Williams' actions during the struggle. PO Alexander did not know whether any additional officers physically interacted with § 87(2)(b) during the incident. PO Alexander did not remember observing § 87(2)(b) or § 87(2)(b) interact with any officers. PO Alexander denied tightening § 87(2)(b)'s handcuffs any further after he was first handcuffed.

PO Alexander added the following in regards to the March 1, 2013, incident:

PO Alexander responded to the scene with PO Joseph Ramistella, of the 79th Precinct, and assisted with the confiscation of the alcohol. Although PO Alexander admitted to carrying boxes out of the club, he did not remember making physical contact with § 87(2)(b) during the confiscation process. PO Alexander did not hear DI Lipetri call § 87(2)(b) a "black fucking monkey."

Witness Officer: PO RAYMOND WILLIAMS

- *PO Williams was § 87(2)(b)*
- *On February 23, 2013, PO Williams worked the same tour and assignment as Sgt. Famighetti and PO Alexander. PO Williams worked from 5:30 p.m. on March 1, 2013, to 2:05 a.m. on March 2, 2013, in uniform and was assigned to Conditions in a marked patrol car with PO Benites.*

Memo Book Entries

PO Williams' memo book entries from February 24, and March 1, 2013, matched those of PO Alexander (encl. M1-M4).

CCRB Testimony

On June 26, 2013, PO Williams was interviewed at the CCRB (encl. M6-M8). § 87(2)(g)

PO Williams added the following in regards to the February 23, 2013, incident:

PO Williams was holding onto § 87(2)(b) by one of his arms and his shirt, when he, PO Alexander, and § 87(2)(b) fell down to the ground, close to a nearby wall. PO Williams did not know whether § 87(2)(b) made physical contact with the wall as he fell down. While on the ground, § 87(2)(b) resisted by rolling on his stomach and placing his hands underneath his body. PO Williams repeatedly tried to pull § 87(2)(b)'s arms out and eventually managed to handcuff him after approximately a minute on the ground. PO Williams did not remember what actions PO Alexander took during the struggle. Neither he nor the other officers punched § 87(2)(b)

PO Williams did not interact with any other civilians or observe PO Benites or Sgt. Famighetti interact with any civilians. PO Benites' and Sgt. Famighetti's only interaction with

§ 87(2)(b) occurred prior to the beginning of the struggle. PO Williams did not hear any officers use profanity during the incident. PO Williams did not recall that he the other officers were asked for their names and shield numbers.

PO Williams added the following in regards to the March 1, 2013, incident:

PO Williams and PO Benites assisted with the confiscation process. PO Williams carried boxes out of the club. PO Williams did not observe PO Alexander or DI Lipetri interact with § 87(2)(b) during the incident.

Subject Officer: PO PAMELA BENITES

- *PO Benites was § 87(2)(b)*
- *On February 23, 2013, PO Benites worked the same tour and assignment as Sgt. Famighetti, PO Alexander, and PO Williams. On March 1, 2013, PO Benites worked the same tour and assignment as PO Williams.*

Memo Book Entries

PO Benites' memo book entries from February 24, and March 1, 2013, matched those of PO Alexander and PO Williams (encl. N1-N5).

PO Benites noted the following March 1, 2013, entries:

CCRB Testimony

On June 26, 2013, PO Benites was interviewed at the CCRB (encl. N7-N9). § 87(2)(g)

PO Benites added the following in regards to the February 23, 2013, incident:

At the beginning of the struggle, § 87(2)(b) kept on turning his body around and attempting to walk further inside the building. At that point, two women tried to approach § 87(2)(b) while yelling at the officers. PO Benites ordered the women to back away. The women then tried to push PO Benites away who then extended her arms out to keep a distance between her and the women.

While doing crowd control, PO Benites occasionally looked behind her. At one point, PO Benites observed § 87(2)(b) place his back against a nearby wall while facing PO Alexander and PO Williams, who were attempting handcuff him. At another point, PO Benites observed § 87(2)(b) on the ground with PO Alexander and PO Williams, but did not see how § 87(2)(b) got to the ground. PO Benites did not make any additional observations of the struggle.

PO Benites did not remember threatening to arrest § 87(2)(b) or hearing Sgt. Famighetti threaten to arrest § 87(2)(b). PO Benites did not observe or hear any officers having any additional interaction with civilians. PO Benites did not have any further interaction with any civilians. PO Benites did not remember which officers responded to the call. PO Benites did not observe any injuries on § 87(2)(b).

PO Benites added the following in regards to the March 1, 2013, incident:

PO Benites did not remember seeing PO Alexander interact with § 87(2)(b) during the incident. PO Benites denied hearing DI Lipetri make the alleged offensive remark.

Subject Officer: DI MICHAEL LIPETRI

- *PO Williams was § 87(2)(b)*
- *On March 1, 2013, DI Lipetri was assigned as the commanding officer of the 79th Precinct. DI Lipetri was dressed in uniform and was working alone in a marked patrol car. DI Lipetri*

worked from 12:00 p.m. to 11:25 p.m.

CCRB Testimony

On November 14, 2013, DI Lipetri was interviewed at the CCRB (encl. O1-O2). § 87(2)(g)

DI Lipetri denied being present at the incident location on February 23, 2013, but admitted to being present on March 1, 2013. On that day, DI Lipetri conducted a business inspection at § 87(2)(b). DI Lipetri had previously conducted similar inspections there, due to violent conditions there. DI Lipetri observed liquor displayed behind the bar, despite his knowledge that the nightclub's liquor license was expired, and ordered multiple officers to confiscate it. DI Lipetri did not observe PO Alexander make physical contact with § 87(2)(b) with a box. DI Lipetri denied making the alleged offensive remark during the incident.

During previous inspections, § 87(2)(b) has shut the music off and announced to the crowd of patrons, inside the premises, that the police was shutting down the party, despite DI Lipetri's assurance that the officers merely wished to conduct an inspection. § 87(2)(b) has also made multiple complaints against the officers in an attempt to keep them from making additional inspections there. § 87(2)(b) has also previously claimed to him that the officers were inside the premises because they do not like black people.

Witness Officer: PO JOSEPH RAMISTELLA

- *PO Ramistella was* § 87(2)(b)
- *On March 1, 2013, PO Ramistella worked the same tour and assignment as Sgt. Famighetti and PO Alexander.*

Memo Book Entries

At 10:10 p.m., PO Ramistella responded to a call for assistance at § 87(2)(b) (encl. P1-P3).

CCRB Testimony

On July 9, 2013, PO Ramistella was interviewed at the CCRB (encl. P5-P6). § 87(2)(g)

PO Ramistella denied being present on February 23, 2013, but admitted to being present on March 1, 2013. PO Ramistella did not observe PO Alexander, or DI Lipetri, interact with § 87(2)(b). PO Ramistella did not hear DI Lipetri make the alleged offensive remark.

Medical Records

§ 87(2)(b) arrived at the hospital via ambulance on § 87(2)(b), at which time he had already been treated with dressings applied by Emergency Medical Services (EMS) personnel. § 87(2)(b) complained of pain to his head and left eye. § 87(2)(b) did not report losing consciousness as a result of the incident. The assessments of § 87(2)(b) showed that he had a small and superficial laceration above his left eyebrow with no active bleeding or swelling noted. A cat scan of § 87(2)(b)'s brain was performed which was unremarkable and did not show any evidence of injury. § 87(2)(b) was eventually discharged and diagnosed with

contusions to his face, scalp, and neck, but not to his eyes (encl. MR7-MR19).

On May 21, 2013, the undersigned investigator received a note from the FDNY indicating that no Ambulance Call Report (ACR) was available because a non-FDNY ambulance was dispatched for § 87(2)(b) (encl. MR39). However, no ACR was included with the medical records from § 87(2)(b).

§ 87(2)(b) was admitted to the hospital on § 87(2)(b) complaining of pain to the left side of his face, his left elbow, and his left wrist. § 87(2)(b) denied losing consciousness as a result of this incident, and also denied nausea, vomiting, and dizziness. § 87(2)(b) added that he felt that his wrists were swollen; however, medical personnel were unable to observe any inflammation or swelling to his wrists.

§ 87(2)(b) was admitted to the hospital again on § 87(2)(b) complaining of pain to his left elbow, but he did not explain how it was sustained. An x-ray of § 87(2)(b)'s elbow showed a spur with no effusion. The remainder of his bone structures and articular surfaces were intact. An x-ray of § 87(2)(b)'s right wrist showed no fractures or dislocations, and no significant soft tissue swelling (encl. MR23-MR33).

Pre-Arrest Screening Form

The pre-arrest screening form filed for § 87(2)(b) following the February 23, 2013, incident, indicates that he complained of an injury to his face and pain to his left arm. The visual assessment section further indicates that § 87(2)(b) sustained injuries to his head and neck as a result of his arrest (encl. MR1-MR2).

NYPD Documents

79th Precinct Roll Calls

The February 23, 2013, tour 3 Roll Call indicates that Sgt. Famighetti, PO Williams, PO Alexander, and PO Benites, were all assigned to Conditions (encl. S1-S16). This Roll Call and the February 24, 2013, tour 1 Roll Call, provided a list of numerous officers closely matching the description of the unidentified black officer. The Roll Calls also provided a list of officers closely matching the description of the unidentified uniformed white officer, and a large number to officers closely matching the considerably vague description of additional subject officers.

The March 1, 2013, tour Roll Call indicates that Sgt. Famighetti, PO Williams, PO Alexander, PO Ramistella, and PO Benites were all assigned to Conditions (encl. S17-S27).

SPRINT Reports § 87(2)(b) § 87(2)(b) and § 87(2)(b) (encl. R1-4)

On February 23, 2013, at 11:51 p.m., a man, who identified himself as § 87(2)(b) stated that he was disc jockeying at § 87(2)(b) located at § 87(2)(b) and that someone was in the process of taking his identification. At 11:56 p.m., Sgt. Famighetti indicated, over the radio, that the incident, which did not involve a crime, was resolved. No additional radio communications are listed on the report. At 11:51 p.m., Sgt. Famighetti made a call indicating that an individual had been arrested. At 2:22 p.m., Sgt. Famighetti resumed patrol. On March 1, 2013, at 9:42 p.m., Lieutenant Doyle and Sgt. Famighetti served summonses to § 87(2)(b). The reports do not list any of the additional units who responded to the calls.

79th Precinct Command Log

The February 24, 2013, tour 1 command log indicates that § 87(2)(b) arrived at the stationhouse at 12:08 a.m. His physical condition was listed as apparently normal with an injury

to his left eye. § 87(2)(b) was transported to § 87(2)(b) at 12:55 a.m. (encl. T7).

Medical Treatment of Prisoner Report

The medical treatment of prisoner report filed for § 87(2)(b) following the February 23, 2013, incident, indicates that he sustained a laceration to his left eye (encl. MR0).

Other Evidence

Video Footage

On April 17, 2013, § 87(2)(b) provided three video recordings showing parts of the incident to the undersigned investigator in person.

The recording located on digital file “201301392_20130417_1704_DM.mov” in Investigative Action 49 shows what appears to be a male and a female officer standing next to an open door, which was held open by a silver colored metal post, leading inside a building, while facing a crowd consisting of civilians and officers. The female officer, who closely matches PO Benites’ pedigree information, is standing directly next to the door while the male officer, who closely matches Sgt. Famighetti’s pedigree information, was standing further away from the door, by the female officer’s right.

In the video, the female officer, is seen talking to and extending her left arm towards a woman, who closely matches § 87(2)(b)’s pedigree information, standing directly in front of her by the door. At the 0:11 mark, an unidentified officer approached the area behind the female officer and leaned his body down; however, the view of the area is obstructed by multiple persons. At the 0:15 mark, the woman is seen shifting her upper body area towards the back of the door. At the 0:16 mark, the female officer then pushed the woman back with her two hands, in one continuous movement, causing the woman to take approximately three steps back. At the 0:18 mark, the woman started quickly moving her right arm twice, towards the female officer, until two civilians started restraining her and multiple additional officers approached the scene. A male officer is then heard saying, “Everything is under control, relax,” to the above-mentioned woman.

Throughout the video, another woman, closely matching § 87(2)(b)’s pedigree information, is seen making sudden movements towards other individuals while yelling phrases such as “fuck out of here,” “motherfucking,” “fucking people,” and making statements such as, “You see this shit,” “You see that fucking white cop,” and “This is disrespectful.” The woman continuously yelled throughout the incident, until an officer, stated to her, “Quiet down,” at the 0:41 mark and again made the same statement at the 0:45 mark.

§ 87(2)(b) indicated to the undersigned investigator that, in this video, he was being restrained behind PO Benites and the door, and that the unidentified black officer approached him and punched him at about the 0:11 mark in this video.

The recording located on digital file “201301392_20130417_1704A_DM.mov” in Investigative Action 50 starts off with multiple individuals having a conversation. In the background, two male officers are standing by the driver side door of a parked vehicle, with one of the officers pointing a flashlight inside the vehicle. Between the 0:23 and 0:35 marks, an individual is heard ordering the crowd, “Everybody off the block,” multiple times. At the 0:37 mark, a woman is heard saying, “Look at what they are doing to the owner.” However, § 87(2)(b) does not appear in the footage.

The recording located on digital file “201301392_20130417_1704B_DM.mov” in Investigative Action 51 shows two officers on the ground, pinning an individual down next to a wall. The officer furthest from the camera holder appears to match PO Alexander’s pedigree

information, while the other officer appears to match PO Williams' pedigree information. The video shows that the officer further away was holding the individual down with his two hands and is not seen making any significant physical movements. The closer officer appears to also be holding the individual down but shifts his lower body around while keeping his hands on top of the individual. At the 0:11 mark, the hands of officer further away slightly shift up and down in what appears to be a response to a movement by the individual. However, the individual's action cannot be clearly distinguished.

A woman can be heard yelling and using profanity, including derivatives of "fuck," throughout the video. At the 0:18 mark, the video shifts slightly to the right from the individual with the officers to the entrance of a building, and at the 0:20 mark, a silver colored metal pole can be seen standing by the entrance.

Arrest for Incident and Disposition

- Case number § 87(2)(b) remains active. The next scheduled court date is § 87(2)(b), in Kings County Criminal Court (encl. U1).

Status of Civil Proceedings

- § 87(2)(b) filed a notice of claim with the City of New York on February 28, 2013, claiming that § 87(2)(b) had been falsely arrested and imprisoned, maliciously prosecuted, deprived of his civil rights, and assaulted and battered, and seeking five million dollars as redress (encl. V2-V4). A 50-h hearing in regards to this civil lawsuit was scheduled for March 19, 2014; however, as of April, 17, 2014, no transcript showing that a hearing had occurred was available (encl. V1). On May 30, 2014, a new inquiry was made to the New York City Law Department requesting the updated status of the hearing (encl. V6) and its results will be added to the case file upon their receipt. § 87(2)(b)'s civil attorney, § 87(2)(b), has not responded to calls seeking information about the hearing and permission to obtain a copy of the transcript.
- As of April 30, 2014, approximately ten months following the expiration of the filing deadline, neither § 87(2)(b) nor § 87(2)(b) has filed a notice of claim with the City of New York in regards to the above incidents (encl. V5).

Civilians Criminal History

- As of May 30, 2014, Office of Court Administration records reveal no criminal convictions for § 87(2)(b) nor § 87(2)(b) (encl. U1-U13).

Civilians CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. C1).
- § 87(2)(b) has not previously filed a complaint with the CCRB (encl. C2).

Subject Officers CCRB History

- Sgt. Famighetti has been a member of the service for ten years and there are no substantiated CCRB allegations against him (encl. B1).
- PO Alexander has been a member of the service for three years and there are no substantiated CCRB allegations against him (encl. B2).
- DI Lipetri has been a member of the service for twenty years and there is one substantiated CCRB allegation against him (encl. B3-B4):
 - In CCRB case number 200201651, DI Lipetri was found to have spoken rudely to a civilian, and received a Command Discipline from the NYPD.

Conclusion

Identification of Subject Officers

PO Alexander and Sgt. Famighetti admitted to being present at the onset of the first incident, and their pedigree information match the description of the subject officers. Multiple civilians also identified PO Alexander and Sgt. Famighetti by name. § 87(2)(b) also identified DI Lipetri, who admitted to being present at the time of the second incident, by name.

Investigative Findings and Recommendations

Allegations Not Pleaded

§ 87(2)(b) admitted to failing to comply with multiple requests for his identification and to shifting his body away from the officers, which is consistent with § 87(2)(b)'s and several officers' statements indicating that he had tried to walk away from the officers. All statements indicate that officers then tried to pull § 87(2)(b) back in order to arrest him considering a summons could not be issued without his identification. Because the initial pulling of § 87(2)(b) was incident to his arrest as the officers were attempting to handcuff him, it is not being pled.

§ 87(2)(b) stated that PO Williams stated to § 87(2)(b) "Shut the fuck up," prior to the start of the physical altercation between § 87(2)(b) and the officers. However, because § 87(2)(b) did not allege that PO Williams made the alleged discourteous remark, and instead stated that Sgt. Famighetti made the remark, this allegation is not being pled against PO Williams.

§ 87(2)(b) said that PO Benites pushed her and warned her she would be arrested. However, because the push she described was minimal and was to prevent her from interfering with the officers, it does not rise to the level of possible misconduct and is not being pleaded. Similarly, given § 87(2)(b)'s actions at the time, the warning was a statement of fact and is not being pleaded as a threat of arrest.

Allegation A – Force: On February 23, 2013, officers used physical force against

§ 87(2)(b) alleged that during his arrest, four to six officers who he could not describe knocked his head against a wall, threw him to the ground, and punched him repeatedly. He also alleged that a black male officer then approached and punched him on his head. § 87(2)(b) could not describe the officers' actions any further. § 87(2)(b) said the black male officer pulled § 87(2)(b) to the ground, Sgt. Famighetti punched his face multiple times, and additional unidentified officers also punched him. § 87(2)(b) said that Sgt. Famighetti and PO Benites pulled § 87(2)(b) down and handcuffed him, that he fell face-first, that four to five unidentified officers then punched him multiple times and that the black male officer knocked his head against a wall. § 87(2)(b) and § 87(2)(b) admitted that their observations of the officers' actions were limited. Furthermore, their failure to cooperate with CCRB photo arrays meant the black male subject officer could not be identified.

§ 87(2)(b) said § 87(2)(b) was pulled to the ground by PO Williams after he tried to evade arrest, and was then handcuffed. § 87(2)(b) corroborated that § 87(2)(b) resisted arrest. Neither § 87(2)(b) nor § 87(2)(b) observed any officers use additional force against § 87(2)(b).

The officers' statements indicate that, after § 87(2)(b) first resisted arrest, PO Williams and PO Alexander took over the struggle, brought § 87(2)(b) to the ground, and eventually handcuffed him, while Sgt. Famighetti and PO Benites conducted crowd control. PO Alexander

admitted to punching § 87(2)(b) in the chest to gain control of his arms, while all other officers interviewed denied using or observing any additional force against § 87(2)(b). Their statements also indicate that additional officers did not arrive until after § 87(2)(b) was brought to the ground, and that § 87(2)(b) was simply escorted to a patrol van after he was handcuffed.

Video evidence shows that an individual was being pinned down by officers, matching PO Williams' and PO Alexander's pedigree information, next to a wall, while two additional officers, matching Sgt. Famighetti's and PO Benites' pedigree information, conducted crowd control, and that an unidentified officer eventually approached § 87(2)(b). However, the unidentified officer's actions are indistinguishable and none of the alleged excessive force was captured. Additionally, based on the yelling woman's statements, heard in the background, it is likely that any and all force used occurred before the encounter was captured on video.

Medical records show that § 87(2)(b) stated that he sustained the injury to his face, during the struggle, when he made contact with the wall after being thrown against it. § 87(2)(b) was diagnosed with a small and superficial laceration to his face and bruising to his head area.

§ 87(2)(b)'s arrest photograph does not show any visible injuries.

§ 87(2)(b) and § 87(2)(b) did not recognize any of the potential subject officers from a first photo array shown to them. All attempts to show them another photo array were unsuccessful as § 87(2)(b) failed to appear at the CCRB at the time of his scheduled appointments, and § 87(2)(b) has failed to contact the undersigned investigator despite multiple contact attempts.

According to the Patrol Guide Procedure, 203-11 (encl. A1-A2), officers must use the minimum necessary force to effect an arrest.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Discourtesy: On February 23, 2013, Sgt. Anthony Famighetti spoke rudely to § 87(2)(b)

Allegation C – Abuse of Authority: On February 23, 2013, Sgt. Anthony Famighetti threatened to arrest § 87(2)(b)

Allegation D – Abuse of Authority: On February 23, 2013, officers refused to provide their names and shield numbers to § 87(2)(b)

Allegation E – Offensive Language: On February 23, 2013, PO Brian Alexander made remarks to § 87(2)(b) based upon race.

Allegation F: On February 23, 2013, PO Brian Alexander tightly handcuffed § 87(2)(b)

§ 87(2)(b) alleged that PO Alexander called him a “big black animal” and tightened his handcuffs further when the two of them were alone in a patrol van. § 87(2)(b) alleged Sgt. Famighetti stated to her, “Shut the fuck up,” and, “I’m going to arrest you.” § 87(2)(b) further stated that she asked each and every officer at scene for their names and shield numbers, specifying that Sgt. Famighetti was one of the officers to whom she made the request, and that each of them failed to provide the requested information to her. § 87(2)(b) who is related to the § 87(2)(b) family, corroborated § 87(2)(b)’s statement that an officer stated to her, “Shut the fuck up.” None of the additional civilians interviewed mentioned witnessing the above allegations occur.

Sgt. Famighetti denied interacting with § 87(2)(b) however, he did state that a woman had asked him for his name and shield number, and that he had provided to that person the requested information. PO Alexander denied tightening § 87(2)(b)’s handcuffs any further after he was first handcuffed. None of the additional officers interviewed testified to hearing § 87(2)(b) make the requests, to hearing Sgt. Famighetti make the alleged discourteous remark or threat of arrest, nor to PO Alexander making the alleged offensive remark.

None of the videos apparently captured the above allegations occur, and instead captured a person, who closely matches § 87(2)(b)’s pedigree information, yelling and cursing at the officers without directly engaging any of them in a conversation. Moreover, one of the videos shows that an officer asked § 87(2)(b) to “Quiet down,” multiple times.

§ 87(2)(g)

Allegation G – On February 23, 2013, an officer spoke rudely to § 87(2)(b)

§ 87(2)(b) stated that, after the struggle ended, she approached an officer alone, who

was standing away from the incident location and stated to her, “Shut the fuck up.” None of the officers interviewed matched the description she provided of this officer. All officers and additional civilians interviewed either denied or did not mention hearing the alleged discourteous remark. None of the video footage captured the alleged remark being made.

The roll calls indicate that multiple officers matching the description of the subject officer were working around the time of the incident. However, the SPRINT report does not indicate which additional units responded to the scene and § 87(2)(b) failed to appear for each of her scheduled photo array viewings at the CCRB.

§ 87(2)(g)

Allegation H – Force: On March 1, 2013, PO Brian Alexander used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Alexander made physical contact with her with a box as he was carrying it out of the club. § 87(2)(b) also explained that, at the time of the contact, she was standing by the entrance to the club and that PO Alexander was walking through the doorway. § 87(2)(b) claimed PO Alexander had enough space to go through the doorway without making contact with her. § 87(2)(b) stated that her wrist swelled up as a result of the contact; however, she did not receive medical attention for it. § 87(2)(b) did not show any visible swelling to her wrist at the time of her interview. No additional interviewed civilians mentioned being present at the time of the incident. PO Alexander did not remember making the alleged action and all additional officers interviewed denied observing him make the alleged action.

§ 87(2)(g)

Allegation I – Offensive Language: On March 1, 2013, DI Michael Lipetri made remarks to § 87(2)(b) based upon race.

§ 87(2)(b) alleged that DI Lipetri called her a “black fucking monkey.” No additional interviewed civilians mentioned being present at the time of the incident.

DI Lipetri denied making the alleged offensive remark. All additional officers interviewed denied hearing DI Lipetri make the alleged remark.

§ 87(2)(g)

Team: 3

Investigator:	_____	<u>Keyne Jean Villert</u>	_____
	Signature	Print	Date
Supervisor:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date